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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD003

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

[FWS-R8-ES-2013-N252]

Bay Delta Habitat Conservation Plan and Natural Community Conservation Plan, Sacramento, CA; Draft Environmental Impact Report/Environmental Impact Statement, Receipt of Applications, and Announcement of Public Meetings

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service and Bureau of Reclamation, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Draft Bay Delta Conservation Plan and Natural Community Conservation Plan (BDCP, or the Plan) and Draft BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for public review and comment. In response to receipt of an application from the California Department of Water Resources and certain State and Federal water contractors (the Applicants), the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), are considering the proposed action of issuing 50-year incidental take permits (ITPs) under the Endangered Species Act (ESA) of 1973, as amended. The

proposed ITPs would authorize the take of individual species listed under the ESA. The permits are needed because take of species could occur as a result of implementation of activities, including those associated with water operations of the California State Water Project by the California Department of Water Resources. Covered activities in the Plan include the construction, operation, monitoring, and maintenance associated with water conveyance, ecosystem restoration, and other activities in the Sacramento-San Joaquin Delta (Delta) and vicinity as described in the BDCP.

The Bureau of Reclamation's (Reclamation's) proposed Federal action is to change operation of Central Valley Project (CVP) facilities in the Delta consistent with the BDCP; this operations change would support implementation of coordinated operation of the CVP with the California State Water Project. Reclamation may also make decisions regarding wheeling CVP water through new Delta conveyance facilities, and implementing habitat restoration and monitoring actions proposed by the BDCP that are consistent with Reclamation's regulatory requirements, programs, authorities, and appropriations. These three Federal co-lead agencies have not selected a preferred alternative at this time.

DATES: Comments on the Draft BDCP and Draft EIR/EIS must be received or postmarked by 5 p.m. Pacific Time on April 14, 2014.

Twelve public meetings will be held to receive comments on the Draft BDCP and Draft EIR/EIS. See SUPPLEMENTARY INFORMATION section for meeting dates and times.

ADDRESSES: To view or download the Draft BDCP and Draft EIR/EIS, or for a list of locations to view hard-bound copies, go to www.baydeltaconservationplan.com.

You may submit written comments by one of the following methods:

1. By e-mail: Submit comments to bdcp.comments@noaa.gov.
2. By hard-copy: Submit comments by U.S. mail, or by hand-delivery, to Ryan Wulff, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

Please see SUPPLEMENTARY INFORMATION section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, National Marine Fisheries Service, 916–930–3733; Lori Rinek, Fish and Wildlife Service, 916–930–5652; or Theresa Olson, Bureau of Reclamation, 916–414–2433.

SUPPLEMENTARY INFORMATION:

Special Accommodation:

The public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ryan Wulff, National Marine Fisheries Service, at 916–930–3733 at least 5 working days prior to the meeting date.

Background

Section 9 of the ESA prohibits the “take” of individuals of an endangered species and, by regulation, a threatened species, 16 U.S.C. 1538(a) (endangered species); 1533(d) (threatened species). The ESA defines the term “take” as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). NMFS defines

“harm” to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102).

Pursuant to section 10(a)(1)(B) of the ESA, FWS and NMFS may issue ITPs authorizing the take of listed species if, among other things, such taking is incidental to, and not the purpose of, otherwise lawful activities. Although take of listed plant species is not prohibited under the ESA, and therefore authorization under an ITP is not necessary, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan.

The Applicants have prepared and submitted the BDCP with their permit applications to the FWS, NMFS, and the California Department of Fish and Wildlife, pursuant to the regulatory requirements for a section 10(a)(1)(B) permit under the ESA, and a section 2835 permit under the California Natural Community Conservation Planning Act of 2003 (California Fish and Game Code, Section 2800 et seq.).

The Applicants seek 50-year incidental take permits for covered activities within the proposed Plan Area. The Plan Area encompasses the Delta and additional areas in which conservation measures may be implemented pursuant to the Plan. Incidental take permits issued for the BDCP will extend to covered activities in the Plan Area.

The conservation strategy in the Plan is primarily focused on the statutory Delta, as defined in California Water Code Section 12220. However, certain areas outside the statutory Delta contain desirable locations for actions that advance the goals and objectives of the Plan. Suisun Marsh, Suisun Bay, and the Yolo Bypass have been included in the Plan Area to provide important sites for habitat restoration that directly

supports goals and objectives for natural communities and covered species. In addition, the conservation strategy includes measures that will be implemented outside of the statutory Delta to complement regional conservation planning efforts underway in Yolo, Solano, Contra Costa, San Joaquin, and Sacramento Counties.

Because the California State Water Project and CVP water infrastructure is operated in coordination, the effects of implementing the BDCP may extend to aquatic systems beyond the Delta, both upstream and downstream. Therefore, the BDCP effects analysis considers these potential upstream and downstream aquatic effects, both positive and negative, to ensure that the overall effects of the BDCP are sufficiently described, analyzed, and addressed.

The Applicants have requested permits that will authorize take of 19 animals listed as threatened or endangered under the ESA, and 19 animals that are not currently listed under the Act. The following four listed species are proposed for coverage under the NMFS permit: Sacramento River winter-run chinook salmon (Oncorhynchus

tshawytscha) Evolutionarily Significant Unit (ESU); Central Valley spring-run chinook salmon (O. tshawytscha) ESU; Central Valley steelhead (O. mykiss) ESU; and the Southern Distinct Population Segment (DPS) of North American green sturgeon (Acipenser medirostris). The following 15 listed species are proposed for coverage under the FWS permit: Delta smelt (Hypomesus transpacificus); riparian brush rabbit (Sylvilagus bachmani riparius); riparian woodrat (Neotoma fuscipes riparia); salt marsh

harvest mouse (Reithrodontomys raviventris); San Joaquin kit fox (Vulpes macrotis mutica); California clapper rail (Rallus longirostris obsoletus); least Bell's vireo (Vireo bellii pusillus); giant garter snake (Thamnophis gigas); California red-legged frog (Rana draytonii); California tiger salamander, Central Valley DPS (Ambystoma californiense); conservancy fairy shrimp (Branchinecta conservatio); longhorn fairy shrimp (Branchinecta longiantenna); Valley elderberry longhorn beetle (Desmocerus californicus dimorphus); vernal pool fairy shrimp (Branchinecta lynchi); and vernal pool tadpole shrimp (Lepidurus packardii).

The proposed Plan and FWS and NMFS permits would also cover 19 animal species that are not currently listed under the ESA: Chinook salmon, Central Valley fall and late fall run ESU (Oncorhynchus tshawytscha); longfin smelt (Spirinchus thaleichthys); Sacramento splittail (Pogonichthys macrolepidotus); white sturgeon (Acipenser transmontanus); Pacific lamprey (Entosphenus tridentatus); river lamprey (Lampetra ayresii); Suisun shrew (Sorex ornatus sinuosus); California black rail (Laterallus jamaicensis coturniculus); greater sandhill crane (Grus canadensis tabida); Suisun song sparrow (Melospiza melodia maxillaries); Swainson's hawk (Buteo swainsoni); tricolored blackbird (Agelaius tricolor); western burrowing owl (Athene cunicularia hypugaea); western yellow-billed cuckoo (Coccyzus americanus

occidentalis); white-tailed kite (Elanus leucurus); yellow-breasted chat (Icteria virens); western pond turtle (Actinemys marmorata); California linderiella (Linderiella occidentalis); and midvalley fairy shrimp (Branchinecta mesoamericana). The proposed permit also would include the following two federally listed plant species: Soft bird's-beak (Cordylanthus mollis ssp. mollis); and Suisun thistle (Cirsium hydrophilum var. hydrophilum).

If the proposed applications are approved and the permits are issued, take authorization of covered listed species would be effective at the time of permit issuance. Take of the currently non-listed covered species would be authorized concurrent with the species' listing under the ESA, should they be listed during the permit period. The proposed Plan is intended to be a comprehensive document that would provide for projects that protect and restore ecosystem health and water supply reliability, to proceed within a stable regulatory environment.

In order to comply with the requirements of the Federal ESA, the proposed Plan addresses a number of elements, including: Species and habitat goals and objectives; an evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed animal species.

Activities proposed for incidental take coverage include all Plan activities related to the development and operation of water conveyance infrastructure; habitat protection, restoration, creation, and enhancement; and other conservation measures to address important stressors in the aquatic environment. The conservation measures were

developed to achieve a package of landscape-scale, natural community, and species

biological goals and objectives. The conservation measures fall into the following categories:

- Construction and operation of new water conveyance infrastructure.
- Operation of both existing and new water conveyance facilities in the Delta consistent with operational criteria in the Plan.
- Protection of existing functioning natural communities that are not currently protected.
- Restoration of specific natural communities in areas that do not currently support those communities.
- Improvement of existing habitat functions within existing natural communities.
- Ongoing management of natural communities and habitat for covered species to maximize the ecological function in the lands conserved by the Plan over the long term.
- Reduction of the adverse effects on covered fish species that result from specific stressors such as predation, toxic constituents in water or sediment, and illegal harvest.

The biological goals of this habitat conservation plan are: (1) To minimize and mitigate, to the maximum extent practicable, the effects on covered species of the

activities proposed in this Plan; and (2) to provide for the conservation and management of covered species in the Plan Area. Restoration, protection, or enhancement of the following natural community types would be undertaken under the proposed Plan: Tidal freshwater and brackish emergent wetland; tidal perennial aquatic; transitional upland areas; seasonally inundated floodplain; channel margin; valley foothill riparian; grassland; vernal pool complex; alkali seasonal wetland complex; managed seasonal wetland; nontidal perennial emergent wetland and nontidal perennial aquatic; and cultivated lands. The Plan also intends to provide public benefits, including helping to prevent species from becoming threatened or endangered, improving ecosystem health, improving the reliability of water supplies, and reducing future risks to the Delta from earthquakes, levee failure, and climate change.

National Environmental Policy Act Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) requires that Federal agencies conduct an environmental analysis of proposed major Federal actions significantly affecting the quality of the human environment. The Federal actions for NMFS and FWS are the proposed issuance of ESA section 10(a)(1)(B) take permits to the Applicants. Reclamation's proposed Federal action is to change operation of CVP facilities in the Delta consistent with the BDCP that would support implementation of coordinated operation of the CVP with the California State Water Project. Reclamation may also make decisions regarding wheeling CVP water through new Delta conveyance facilities, and implementing habitat restoration and monitoring actions proposed by the BDCP that are consistent with Reclamation's regulatory requirements, programs, authorities, and appropriations. A joint Draft EIR/EIS has been prepared to satisfy NEPA

and the California Environmental Quality Act (California Public Resources Code, Section 21000 et seq.). NMFS, FWS, and Reclamation are Federal co-lead agencies under NEPA, and the California Department of Water Resources is the State lead agency under the California Environmental Quality Act.

The Draft EIR/EIS analyzes 16 alternatives, including the issuance of ITPs/authorizations and implementation of the proposed Plan, which is described above. In addition, as required by NEPA, the EIR/EIS identifies direct, indirect, and cumulative effects, and possible mitigation for those effects, on biological resources, land use, air quality, water quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives.

No Action Alternative: Under the No Action Alternative, FWS and NMFS would not issue ITPs or incidental take authorizations for implementation of the BDCP, and Reclamation would continue to operate the CVP consistent with current management direction. As a result, the Applicants would likely seek individual incidental take authorization as needed for new projects and ongoing operations that would result in the take of federally listed species.

Action alternatives: Four main variables define each of the 15 action alternatives analyzed in the Draft EIR/EIS:

- Alignment and design of water conveyance (delivery) facilities.
- Operational guidelines.
- Water delivery capacity (from 3,000 to 15,000 cubic feet per second).
- Acreage of proposed habitat restoration and enhancement.

Public Meeting Information

Twelve public meetings will be held to provide an overview of the project and allow public comment and discussion:

1. Wednesday, January 15, 2014, 3 p.m. to 7 p.m., Fresno Convention and Entertainment Center, 848 M Street, Fresno, CA 93721.
2. Thursday, January 16, 2014, 3 p.m. to 7 p.m., Four Points by Sheraton, 5101 California Avenue, Bakersfield, CA 93309.
3. Tuesday, January 21, 2014, 3 p.m. to 7 p.m., University Plaza Waterfront Hotel, 110 W Fremont Street, Stockton, CA 95202.
4. Wednesday, January 22, 2014, 3 p.m. to 7 p.m., San Jose Marriott, 301 S. Market Street, San Jose, CA 95113.
5. Thursday, January 23, 2014, 3 p.m. to 7 p.m., Red Lion Hotel, 1830 Hilltop Drive, Redding, CA 96002.
6. Tuesday, January 28, 2014, 5 p.m. to 9 p.m., Hilton Garden Inn, 2200 Gateway Court, Fairfield, CA 94533.
7. Wednesday, January 29, 2014, 5 p.m. to 9 p.m., Jean Harvie Community Center, 14273 River Road, Walnut Grove, CA 95690.
8. Thursday, January 30, 2014, 3 p.m. to 7 p.m., Sheraton Grand Sacramento Hotel, 1230 J Street, Sacramento, CA 95814.
9. Tuesday, February 4, 2014, 3 p.m. to 7 p.m., Los Angeles Convention Center, 1201 S. Figueroa Street, Los Angeles, CA 90015.
10. Wednesday, February 5, 2014, 3 p.m. to 7 p.m., Ontario Convention Center, 2000 E. Convention Center Way, Ontario, CA 91764.

11. Thursday, February 6, 2014, 3 p.m. to 7 p.m., San Diego Convention Center, 111 West Harbor Drive, San Diego, CA 92101.

12. Wednesday, February 12, 2014, 3 p.m. to 7 p.m., Clarksburg Middle School, 52870 Netherlands Road, Clarksburg, CA 95612.

Public Comments

This notice is provided pursuant to ESA and NEPA, as amended. Submitting comments to the e-mail and hard-copy addresses identified in the ADDRESSES section of this notice will constitute effective filing of the California Environmental Quality Act comments on the EIR portion of the EIR/EIS. NMFS, FWS, and Reclamation are furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record for this action. Comments on the Draft BDCP and/or Draft EIR/EIS should be submitted to the address listed in the ADDRESSES section of this document. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted to the above address will be reviewed and considered by all of the lead agencies.

Next Steps

The lead agencies will compile and review all public comments on the Draft BDCP and Draft EIR/EIS submitted to them prior to preparation of a final EIR/EIS. A

permit decision by NMFS and FWS and a decision by Reclamation on CVP operations consistent with the BDCP, habitat restoration, and monitoring actions in the Delta will be made no sooner than 30 days after the publication of the final EIR/EIS and completion of the Record of Decision. A draft Implementing Agreement is still under preparation and will be made available to the public for review and comment in early 2014. It will be posted at www.baydeltaconservationplan.com as soon as it is available.

Dated: December 9, 2013.

Angela Somma,
Chief, Endangered Species Conservation Division,
Office of Protected Resources,
National Marine Fisheries Service.

Dated: December 4, 2013.

Alexandra Pitts,
Deputy Regional Director,
Pacific Southwest Region,
Fish and Wildlife Service.

Dated: December 2, 2013.

Pablo R. Arroyave,
Deputy Regional Director,
Mid-Pacific Region,
Bureau of Reclamation.

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